

# McKay must be given nine separate trials, judge rules

By TOM GREER

A judge has ruled Aubrey McKay must be given nine separate trials on charges of 35 felonies, including the alleged rape of four Wilmington women last summer.

Superior Court Judge Joseph T. Walsh granted a motion by McKay's court-appointed lawyer, Jack Phillips, that McKay be tried separately on the multiple charges involved in eight different criminal incidents he is accused of committing. He will also face a ninth trial for escape and possession of a deadly weapon.

Walsh concluded that McKay, 30, could not receive a fair trial if the same jury considered all of the different charges against him.

Attorney General Richard R. Wier Jr. — who with Deputy Attorney General Edward C. Pankowski Jr. will prosecute McKay — said the state will be ready to go to trial on all charges. McKay is scheduled to go to trial Jan. 23.

Neither Wier nor Pankowski would venture a guess as to how much it will cost to try McKay nine times. Wier said he did not think there was any basis for appealing Walsh's decision.

McKay has refused to accept a plea bargain offered by the state

under which he would plead guilty to 22 of the counts, punishable by up to nine consecutive life terms, plus up to 270 additional years. Although he was fired Phillips, the attorney has been ordered by the court to continue to represent McKay as best he can without McKay's cooperation.

Pankowski said, "We'll see what happens after the first trial." Noting that McKay is accused of first-degree rape, first-degree kidnapping, first-degree robbery and three deadly weapon charges in the first incident, the prosecutor said McKay could receive two life sentences plus up to 120 years, if convicted as charged.

Walsh denied a motion by Phillips to dismiss the indictment on grounds that publicity surrounding the commission of the offenses and McKay's apprehension made it impossible for him to receive a fair trial.

The judge conceded that there was "intense newspaper publicity" about the incidents leading to the indictment, McKay's incarceration history and apprehension. But Walsh said the publicity was not so "inherently prejudicial" that juror prejudice could not be determined by pretrial question-

ing of prospective jurors.

The eight separate incidents involving nine different victims occurred in Wilmington between May 17 and June 30 while McKay was on furlough from Delaware Correctional Center where he was serving 30 years for manslaughter. In bringing the escape charge, the state accused him of failing to return from furlough.

In ruling that there should be separate trials, Walsh said, "The sheer mass of charges" made it "extremely unlikely" the jury could "resist the cumulative effect of evidence linking the defendant to separate charges."

To ask the jury to make "compartmentalized judgments" about eight separate incidents of an "inflammatory nature" would be to expect "an unusual degree of detachment," the judge said.

Adding to the problem were the potentially prejudicial charges of escape after conviction and possession of a deadly weapon by a person prohibited, Walsh said.

Walsh said he appreciated the "judicial economy" offered by a single trial. But on balance that consideration did not offset the "prejudicial effect" of a single trial, he said.

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